IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Bail Appl..No. 5012 of 2007()

(CRIME NO.342/2001 OF VALAPAD POLICE STATION)

PETITIONER/ACCUSED:

ANIL KUMAR @ ANIL BAHULEYAN METHIL,
AGED 37 YEARS, S/O. BAHULEYAN, METHIL HOUSE,
P.O. KARAYAMUTTOM,VALAPPAD VILLAGE,CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.BABU KARUKAPADATH

RESPONDENT: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
VALAPAD THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5012 of 2007

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Dated this the 16th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment for offences punishable, inter alia, under sections 406 and 420 IPC. Altogether there were three accused persons. The petitioner is the 2nd accused. The first accused is no more. The 2nd accused, who faced trial, wasfound not guilty and acquitted. The petitioner was not available for trial. The case against him was split up. The same has been transferred to the list of long pending cases. The learned Magistrate has issued coercive processes against the petitioner. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was not wilful and on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and seek bail. In fact the petitioner submits that the matter has been settled between the parties and defacto complainant has no surviving grievances whatsoever. He

apprehends that his application for bail and his prayer for composition may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner. The learned Public Prosecutor opposes the application. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. He can report composition also before the learned Magistrate.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. It is submitted that the matter is settled. It is for the petitioner to report such settlement/composition before the

learned Magistrate. The learned Magistrate must certainly consider whether such composition can be accepted. The learned Magistrate, needless to say must consider whether charges are liable to be framed for offences which is not compoundable.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE